

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

BOBBY GENE SITZES II,

Petitioner, :

Case No. 3:25-cv-141

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

WARDEN, London Correctional
Institution,

:
Respondent.

**DECISION AND ORDER DENYING PETITIONER'S SECOND
MOTION FOR STAY**

This is an action brought pursuant to 28 U.S.C. § 2254 for a writ of habeas corpus; Petitioner seeks release from confinement imposed by the Clark County Court of Common Pleas in a criminal action (Petition, ECF No. 1). The case is before the Court on Petitioner's Second Motion for Stay and Abeyance of these proceedings pending the outcome of his petition for post-conviction relief in the Clark County Court (ECF No. 8).

Petitioner previously sought a similar stay, averring that he filed his petition under Ohio Revised Code § 2953.21 on April 29, 2024, but that it had not yet been decided (ECF No. 4). He asserted that under Ohio Crim. R. 35(C) the Common Pleas Court has a duty to decide such petitions within 180 days of filing. *Id.* Upon an initial reading of that Rule, Petitioner appears to be correct.

Upon the filing of the Petition in this Court, the undersigned ordered Respondent to answer

and file the State Court Record within sixty days (ECF No. 2). Those documents have not yet been filed and Respondent's time to do so, which was extended, will not expire until August 1, 2025. In May, 2025, the Court denied the Motion with leave to re-file after the State Court Record was filed, but that has not yet occurred. The Motion for Stay and Abeyance is denied on the same basis as the prior Motion. As the Magistrate Judge noted previously, the Court has authority to waive exhaustion if the state courts cannot timely decide the post-conviction relief petition.

July 29, 2025.

s/ Michael R. Merz
United States Magistrate Judge